SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No.

SPRINGFIELD, OHIO, LOCAL NO. 352, OF THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, ET AL.,

Petitioners,

vs.

WILLIAM SETTOS, LESSEE OF LIBERTY THEATRE, D. B. A. LIBERTY THEATRE.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

A.

The Opinions of the Court Below.

The decision of the Court of Appeals of Clark County is reported in 32 Ohio Law Abstract 219.

The judgment of the Supreme Court of Ohio dismissing the constitutional question is reported in full in 138 Ohio State 40, 32 N. E. (2d) 22.

B.

Jurisdiction.

The statutory provision sustaining the jurisdiction of this Court is Title 28 U. S. C. A., Section 344(b), (Judicial Code, Section 237(b), as amended by the Act of February 13, 1925).

The petition for writ of certiorari sets forth in detail the manner and stage in the proceedings before all of the courts of Ohio in which the Federal question was raised, and the manner in which it was decided. Throughout, it was contended that the right peacefully to picket was guaranteed by the Fourteenth Amendment to the Constitution of the United States. The nature of this case and the rulings below clearly bring this case within the statutory provision above cited. The following cases, among others, sustain this Court's jurisdiction: *American Federation of Labor* v. *Swing*, No. 56, decided February 10, 1941; *Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc.*, No. 1, decided February 10, 1941; *Journeymen Tailors' Union, Local 195* v. *Millers, Inc.*, decided by Supreme Court of the U. S. March 3, 1941; *C. I. O.* v. *Hague*, 59 Supreme Court 954; *Lovell* v. *Griffin*, 303 U. S. 444; *Van Huffel* v. *Harkelrode*, 284 U. S. 225.

C.

Statement of the Case.

A summary statement of the case appears under the heading A in the petition for writ of certiorari and, in the interests of brevity, is incorporated here by reference.

D.

Errors Assigned.

1. That the courts of Ohio erred in failing to hold that the rights of the petitioners to free speech under the Fourteenth Amendment to the Constitution of the United States permitted them to inform the public of their grievances

against the Liberty Theatre by having a single person carry a banner in the public street in front of the theatre.

2. That the Supreme Court of Ohio erred in failing to review and reverse the following judgment and decree of the Court of Appeals of Clark County:

> "It is therefore ordered, adjudged and decreed that the Defendants-Appellants, and each of them, and all members of Local No. 352 of the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, be hereby enjoined and restrained from all picketing of Plaintiff's theatre, from any and all boycotting or attempts to boycott said theatre, and from in any way injuring or damaging Plaintiff in his business of operating a moving picture theatre; and this cause is remanded to the Common Pleas Court of Clark County for execution of this decree and for any further proceedings according to law."

E.

ARGUMENT.

The identity in principle of the instant case with several cases recently decided by this Honorable Court eliminates the need for elaborate argument. There is no conceivable point of distinction between this case and the cases of *American Federation of Labor* v. *Swing, supra; Milk Wagon Drivers' Union* v. *Meadowmoor Dairies, Inc., supra;* and *Journeymen Tailors' Union, Local 195,* v. *Millers, Inc., supra.*

In the *Swing* case, as here, all picketing, including peaceful picketing, was enjoined on the ground that there was no dispute between the employer and his immediate employees. This Honorable Court reversed the decree and said:

> "All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing *en masse* or otherwise con-

ducted' so as to occasion 'imminent and aggravated danger'. *Thornhill* v. *Alabama*, 310 U. S. 88, 105. We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guarantee of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic interest of all engaged in the same industry has become a commonplace. *American Foundries* v. *Tri-City Council*, 257 U. S. 184, 209. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in *Thornhill's* case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.' *Senn* v. *Tile Layers Union*, 301 U. S. 468, 478."

The case of *Journeymen Tailors* is equally applicable. In that case this Honorable Court, in a *per curiam* decision granted certiorari and reversed the decision of the Supreme Court of New Jersey which affirmed an injunction restraining peaceful picketing by a union because of the absence of a controversy between the employer and his immediate employees.

The holding in the *Meadowmoor* case is to the same effect. Though in that case this Honorable Court sustained the injunction issued by the state court, it did so solely because the picketing in that case was not peaceful but rather enmeshed in a background of substantial and continued violence. In the instant case there is not the slightest semblance of violence or unlawfulness in the conduct of the single picket involved. It is undisputed in the pleadings, findings and conclusions that the picket was entirely peaceful. Under the doctrine pronounced in the foregoing cases, as well as in the leading cases of *Thornhill* v. *Alabama*, 310 U. S. 88, and *Carlson* v. *California*, 310 U. S. 106, the affirmance of the decree in the instant case by the Supreme Court of Ohio is clearly repugnant to the Fourteenth Amendment to the Constitution of the United States.

Evidently, however, the Supreme Court of the State of Ohio persists in ignoring the holdings of this Honorable Court and the restrictions imposed upon it by the Constitution of the United States. The decision of the Court of Appeals was expressly premised on the case of *Crosby* v. *Rath*, 136 O. S. 352. In that case the Ohio court, like the Illinois court in the *Swing* case, relied exclusively on the fact that the employees of the picketed establishment were not members of the union, and that there was no controversy over wages, hours or conditions of work between the employer and his immediate employees.

Certiorari was requested of this Honorable Court to review the *Crosby* v. *Rath* decision. On February 10, 1941, the request was denied (*Rath* v. *Crosby*, No. 187). On the

same day this Honorable Court announced its decision in the *Swing* and *Meadowmoor* cases.

It is apparent that, whatever other grounds there may have been for denying the writ in the *Crosby* case, the *Meadowmoor* and *Swing* cases, decided on the same day, covered the *Crosby* situation. Certain it is that the courts of Ohio are subject to the same Federal Constitution and its interpretation by the Supreme Court of the United States as are the courts of Illinois and other States.

The decision of the Supreme Court of Ohio in the instant case was rendered on February 26, 1941, sixteen days after this Honorable Court's decisions in the *Swing* and *Meadowmoor* cases were rendered. Conceivably, the Ohio Supreme Court was not apprized of the existence of these decisions in that short period when it rendered its original decision. But petitioners expressly called these decisions to the attention of the court in their application for rehearing. The application was exclusively devoted to a discussion of those two decisions and their clear and controlling effect upon the instant case. The Supreme Court of Ohio, in the face of these clearly applicable and determinative decisions, denied the rehearing.

Organized labor, therefore, appeals to this Honorable Court to safeguard its basic constitutional rights in the State of Ohio.

Respectfully submitted,

JOSEPH A. PADWAY,
HENRY KAISER,
736 Bowen Building,
Washington, D. C.
Counsel for Petitioners.